

## REMARKS

The Examiner has issued a Restriction Requirement between Group I, Claims 12-13 and 31-32, and Group II, Claims 1-11, 24-30 and 33-35. In response, the Applicant hereby elects to prosecute the group of claims designated by the Examiner as Group II, Claims 1-11, 24-30 and 33-35. Applicant makes this election **WITH TRAVERSE**.

The Examiner has characterized Group I, Claims 12-13 and 31-32, as being drawn to a rowing machine and support structure classified in class 482, subclass 72 and Group II, Claims 1-11, 24-30 and 33-35, as being drawn to a support structure classified in class 108, subclass 50.11. The Examiner has also indicated that Groups I and II are related as combination and subcombination and has properly stated that restriction is proper for groups related as combination and subcombination if it can be shown that: (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability; and (2) that the subcombination has utility by itself or in other combinations. In support of the restriction between Groups I and II, the Examiner has asserted that “the combination as claimed does not require the particulars of the subcombination as claimed because the support structure can be used to support a materially different device” and that “[t]he subcombination has separate utility such as a support for a bench or other horizontal device.”

In order to establish that combination and subcombination inventions are distinct, two-way distinctness must be demonstrated. In this regard, while the Examiner has satisfactorily demonstrated to the Applicant that the subcombination has separate utility, the Applicant respectfully submits that the Examiner has not demonstrated distinctness between the combination and subcombination. The Examiner asserts that “the combination as claimed does not require the particulars of the subcombination as claimed because the support structure can be used to support a

materially different device.” In response, the Applicant respectfully submits that the foregoing is not an appropriate test for distinctness. Rather, the test is a comparison of the limitations recited in the claims of the subcombination and the limitations recited in the combination. For example, MPEP § 806.05(c)(I) states that “the omission of details of the claimed subcombination B<sub>sp</sub> in the combination claim AB<sub>br</sub> is evidence that the patentability of the combination does not rely on the details of the specific combination” and that, in such a case, restriction between the combination and subcombination is proper. In the present application, the Applicant has compared the subcombination recited in Claim 1 to the combination recited in Claim 12. Upon comparing the two, it was determined that every single limitation recited in the subcombination of Claim 1 is also recited as a limitation of the combination of Claim 12. In such cases, restriction is not proper, “even though the subcombination has separate utility.” MPEP § 806.05(c)(II), lines 8-9.

On a related note, in conducting the comparison of the subcombination recited in Claim 1 to the combination recited in Claim 12, it was noted that, as a result of Applicant’s amendment filed April 29, 2004, certain limitations related to the support structure were added to Claim 1 but were not added to Claim 12 and, as a result, the correspondence of the support structure recited in the subcombination of Claim 1 to the support structure recited in Claim 12 inadvertently diverged somewhat from the desired element-to-element correspondence. Accordingly, the Applicant hereby amends Claim 12 to restore the desired relationship between Claims 1 and 12 and apologizes for any confusion resulting from the inadvertent divergence between the two. Further, upon amending Claim 12, the cancellation of Claim 13 appeared appropriate to ensure that Claim 12 remained clear.

For all the above reasons, the Applicant respectfully requests the reconsideration and withdrawal of the restriction between Group I, Claims 12-13 and 31-32, and Group II, Claims 1-

11, 24-30 and 33-35 and that Claims 1-12 and 24-35 be kept together. The Applicant further requests these claims be promptly allowed for the reasons set forth in the Amendment filed April 29, 2004.


The Commissioner is hereby authorized to charge any fees connected with this communication or credit any overpayment to Deposit Account No. 50-1515, Conley Rose, P.C.

Respectfully submitted,

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